THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.19898 of 2005

(AND BATCH - 19909, 19923, 19928, 19943, 19956, 19958, 19976, 20009, 20014 and 20018 of 2005

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DATED: 12.09.2005

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BETWEEN:

V.Gopal Reddy, S/o Sri Venkat Reddy,

H.No.5-8-546, Ashoknagar Colony, Kamareddy,

Nizamabad Dist and Others.

...PETITIONER

AND

The Election Officer and Commissioner, Municipal Council, Kamareddy, Nizamabad District and Others.

...RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.19898, 19909, 19923, 19928, 19943, 19956, 19958, 19976, 20009, 20014 and 20018 of 2005

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COMMON ORDER:

The quinquennial elections to Municipalities in the State of Andhra Pradesh were set in motion by the State Election Commission (SEC) by issue of necessary notifications under Articles 243-K and 243-ZA of Constitution of India read with relevant enabling provisions in Andhra Pradesh Municipalities Act, 1965 (the Act, for brevity) and Andhra Pradesh Municipalities (Conduct of Election of Members) Rules, 2005 (Conduct of Election Rules, for brevity). The notification was issued on

29.08.2005 prescribing the following election programme.

1.	Publication of Ward-wise Electoral Rolls by Election Officer under Rule 5 of the said rules	:	**01.09.2005 (Thursday)**
2.	Publication of Election Notice under rule 6 of the said rules by the Election Officer	:	**01.09.2005 (Thursday) (From this date onwards Nominations can be filed from 11.00 am to 3.00pm)**
3.	Last Date for receipt of Nominations	:	**05.09.2005 (Monday) (Upto 3.00 pm)**
4.	Scrutiny of Nominations	:	**06.09.2005 (Tuesday) (from 11.00 am onwards)**
5.	Last date for withdrawal of Candidature	:	**09.09.2005 (Friday) (not later than 3.00 pm)**
6.	Date of publication of list of contesting candidates	:	**09.09.2005 (Friday) (after 3.00 pm)**
7.	Date of poll	:	**24.09.2005 (Saturday) (from 7.00am to 5.00pm)**
8.	Date of Counting	:	**26.09.2005 (Monday) (from 8.00am onwards)**

The petitioners in all these writ petitions filed their nominations before the last date prescribed therefor. For one reason or the other, their nominations were rejected. Aggrieved by the same, the petitioners invoked the jurisdiction of this Court under Article 226 of Constitution of India. All the petitioners seek a declaration that the action of the Election Officer and Municipal Commissioner concerned Municipality illegal and for consequential directions to receive the nomination of the petitioners. Though the background facts vary from petition to petition, the contentions center round Section 13B, 14 and 15 of the Act and Rules 6 to 10 of Conduct of Election Rules. It is therefore proposed to dispose of all the writ petitions by this common order.

The learned counsel made elaborate submissions relevant to each writ petition in which the counsel is appearing for the petitioner. The submissions may be noticed while briefly noticing the fact of the matter in each case.

Writ Petition No.19898 of 2005

The writ petition is filed by a resident of Kamareddy Municipality. He belongs to Telugu Desam party. He alleged that he asked the Election Officer for nomination forms. He was advised to produce 'no due certificate' from the Municipal Council. Accordingly, he allegedly paid the property tax up to 31.03.2006 and obtained 'no due certificate' dated 01.09.2005. On production of the same, Election Officer supplied four sets of nomination papers duly endorsing the same on the no due certificate. He submitted nomination form to contest as Member of Ward No.33 on 05.09.2005. As per the election programme, the nominations were scrutinized on

06.09.2005. It is alleged that by that time the nomination of the petitioner was statedly found to be in order. However, on 07.09.2005, he came to know that his nomination is rejected and when he met the Election Officer, no proper reason was given. On the same day, in newspapers it was reported that the nomination of the petitioner was rejected as he failed to produce 'no due certificate'. The learned counsel for the petitioner, Sri S.Satyam Reddy, submits that either under the handbook issued by the SEC or under the provisions of the Act, there is no requirement of production of 'no due certificate'. Such requirement has to be fulfilled only when the Municipality issues a demand notice for payment of property tax. In the absence of such requirement, it was improper for the Election Officer to reject nomination which is illegal and contrary to Rule 10(2) and (3) of Conduct of Election Rules. Secondly, he submits that the petitioner was given four sets of nominations only on production of 'no due certificate' which was enclosed to the nomination papers and therefore the action is illegal. Thirdly, it is urged that the rejection of nomination is vitiated by malice. The petitioner gave a complaint to the District collector against the manipulation of voters list by Mandal Revenue Officer, Revenue Divisional Officer and fifteen Panchayat Secretaries, based on which an enquiry was conducted leading to suspension of all the persons by the SEC. Therefore, Election Officer rejected the nomination of the petitioner out of spite. Learned counsel has taken this Court through the relevant portions from the handbook issued by SEC as well as Section 15 of the Act. He also placed reliance on the decision of the Supreme Court in **Manda Jaganath v K.S.Rathnam** (for short, **Manda Jaganath**). He would also vehemently contends that when the gross illegality is committed by the Election Officer in the rejection of the nomination as contrary to Rules and provisions of the Act, the Courts' jurisdiction is not totally barred under Article 243-ZG of Constitution of India.

The learned standing counsel for Municipalities, P.Radhakrishna, has placed before this Court the Xerox copy of the nomination submitted by the petitioner and contends that the petitioner did not enclose the 'no due certificate'. According to the learned standing counsel, a writ petition against the rejection of nomination is not maintainable. He placed reliance on various decisions of this Court as well as recent Judgment of the Supreme Court in **Manda Jaganath**.

Writ Petition No.19909 of 2005

The petitioner filed his nomination for the Office of Member of Ward Nos.31 and 36 in Dharmavaram Municipality, Anantapur District. The Election Officer rejected the same on 06.09.2005 after verifying the objection raised by Sri Ameer Basha, one of the candidates in Ward No.31 and Sri N.Venkata Reddy, a contestant of Ward No.36. It was alleged that the petitioner has more than two children. They also produced the certificate issued by
Dr.Vasudeva Reddy of Akhila Praja Vydyasala to the effect that petitioner's wife gave birth to a male child on 22.05.2001. The learned counsel for the petitioner, Sri P.Veera Reddy, does not dispute that as per Section 13B of the Act, a person with more than two children is disqualified to contest for any office in the Municipality. He,

however, submits that the verification of the objections raised by other candidates by the Election Officer was not proper. He would urge that the certificate allegedly issued by Akhila Praja Vydyasala does not in any manner relate to the petitioner's wife and therefore the action of the respondent is illegal. The learned standing counsel for Municipalities,
Sri Newton, opposed the writ petition raising preliminary objection as to maintainability of the writ petition.

Writ Petition No.19923 of 2005

This writ petition is filed by a resident of Jammalamadugu Nagar Panchayat. She submitted nomination to contest election for Ward No.17. When the nomination was submitted, one Jeelani Basha proposed her name duly affixing signature. It appears during the scrutiny on 06.09.2005, Jeelani Basha filed a petition before the Election Officer. He alleged that he is an illiterate person, that he never proposed Rahamath Bee (petitioner) and that being an illiterate he is not capable of affixing the signature and accordingly requested to reject the nomination. Based on such representation, the nomination was rejected communicating the reasons to the petitioner to the effect that the nomination is rejected as per paragraph 2(i) of Chapter II of Handbook for Election Officers. The learned counsel for the petitioner,
Sri P.Veera Reddy, submits that the petitioner was not given any opportunity to rebut the allegation made by Jeelani Basha and the Election Officer has taken unilateral decision. According to the learned counsel, the signature made by the proposer is irreversible and merely on the ground that the proposed is withdrawn, nomination cannot be rejected.

Writ Petition No.19928 of 2005

This writ petition pertains to Bodhan Municipality. The petitioner filed a nomination as Member of Ward No.6. The nomination was rejected on the ground that the petitioner disqualified under Section 13B for having fathered three children. During the scrutiny of the nominations, another contesting candidate M.Guna Prasad filed a copy of the plaint in O.S.No.19 of 2004 on the file of the Court of Senior Civil Judge, Bodhan. In that suit, the petitioner and his wife (as plaintiffs) prayed for damages from one Dr.Santhosh Reddy and two others for negligence in performing family planning (IPL) operation. In the said plaint, the petitioner admitted that after two children, the wife underwent operation and in spite of the same, she again conceived giving birth to third child on 19.10.2003. The learned counsel for the petitioner, Sri Bhaskar, contends that as the third child was born due to Doctor's negligence and as the Government has got the power to grant relaxation of Section 13B of the Act, the Election Officer ought not to have rejected the nomination.

Writ Petition No.19943 of 2005

The petitioner, Satya Krupa Raju, claims to be an ex-serviceman. When Tadepalligudem Municipality issued a tax demand notice dated 26.04.2005 under Section 91 of the Act, he filed a writ petition being W.P.No.19590 of 2005. The same was disposed of by this Court on 05.09.2005. While directing the Municipal Commissioner not to give effect to the demand notice, this Court disposed of the writ petition directing the authorities to consider the representation of the petitioner dated 20.06.2005. In that writ petition, the petitioner contended that as per the Orders of the government in G.O.Ms.No.83 dated 15.03.1997, ex-servicemen are exempted from payment of property tax for self-occupied one building and therefore Municipality cannot demand property tax. The petitioner submitted nomination for Ward No.1. In the newspapers, it was reported that the petitioner's nomination was rejected by the Election Officer as he failed to pay the property tax. The learned counsel for the petitioner, Sri P.Rajagopal Reddy, vehemently contends that in spite of the orders of this Court dated 05.09.2005 in W.P.No.19590 of 2005 and in spite of the Government Orders in G.O.Ms.No.83 dated 15.03.1997, the Election Officer rejected the nomination of the petitioner which is illegal. For the ignorance on the part of the Election Officer regarding legal position, the petitioner cannot be penalized and he cannot be denied of his right to contest as Member of Municipal Ward.

Writ Petition No.19956 of 2005

A resident of Guntakal Municipality is the petitioner in this writ petition. He filed his nomination for Ward No.4 of Guntakal Municipality. After scrutiny, the Election Officer rejected the same vide endorsement dated 06.09.2005 on the ground that the objection raised by G.Mallikarjuna alleging that the petitioner has more than three children, was on verification found to be correct and therefore the petitioner incurred disqualification under Section 13B of the Act. The learned counsel for the petitioner, Sri P.Roy Reddy, contends that during the Municipal Elections, 2000, the petitioner's nomination was rejected by Election Officer. After elections, the petitioner filed O.P.No.32 of 2000. The same was allowed by the Election Tribunal cum the Court of Senior Civil Judge, Gooty, on 12.10.2001 holding that as the petitioner gave one of his three children in adoption, the disqualification under Section 13B of the Act is not attracted. The Election Officer challenged the same in W.P.No.5558 of 2003, which was dismissed holding that the Election Officer has no *locus standi* in the matter. According to the learned counsel, in view of the same, the decision in O.P.No.32 of 2000 is final and the rejection of the nomination is illegal. The learned standing counsel for Municipality has placed reliance on the observations made by this Court in W.P.No.5558 of 2003 in support of the contention that even if the third child is given in adoption, the same in any manner removes the disqualification under Section 13B of the Act.

Writ Petition No.19958 of 2005

Kaghaznagar is one of the Municipalities in the State for which elections are being conducted. The petitioner, in this writ petition, filed nomination for Ward No.17 of the said Municipality. By that time, he was Municipal licensed plumber with registration given by the Municipal Commissioner, which is necessary mandatory registration and it is a disqualification. The petitioner, therefore, allegedly submitted an application on 04.09.2005 requesting the Commissioner to cancel the registration. According to the petitioner, necessary orders were passed in the note file. But, in spite of the same, the petitioner's nomination was rejected on 06.09.2005 on the ground that the model code of conduct for Municipal Elections, 2005 came into force on 29.08.2005 and therefore his application for cancellation of Registration cannot be considered and the nomination is rejected. The learned counsel for the petitioner, Sri B.Sudhakar Reddy, strongly relies on Xerox copy (in Telugu) dated 05.09.2005 of notice/order issued by the Municipal Commissioner to the effect that the plumber licence/registration of the petitioner is cancelled. **Per contra**, the learned standing counsel for Municipalities submits that the Telugu Xerox copy of the notice of cancellation is not even signed by the Municipal Commissioner and therefore the same cannot be a ground for the petitioner to challenge the rejection of nomination.

Writ Petition No.19976 of 2005

The petitioner in this case filed his nomination for Ward No.1 of Yellandu Municipality in Khammam District. The same was rejected vide endorsement dated 06.09.2005 on the ground that the candidate's name is not found in the voters list as on the date of notification, i.e., 29.08.2005. The learned counsel for the petitioner, Sri K.Satyanarayana Murthy, made the submissions to the following effect. The petitioner is an employee of Singareni Collieries and was a resident of Subashnagar of Sudimalla Gram Panchayat. After allotment of quarters, he shifted to Yellandu Municipal area. After publication of the electoral roll, the petitioner submitted Form 8-A as per Registration of Electoral Rules, 1960 to the Revenue Divisional Officer. As no orders are passed, the petitioner along with another person filed W.P.No.19519 of 2005 for direction to consider his application in Form 8-A. This Court disposed of the said writ petition on 02.09.2005 directing the Revenue Divisional Officer to pass appropriate orders, who by orders dated 03.09.2005 directed to transpose the name of the petitioner in Yellandu Municipality. Therefore, the action of the Election Officer in rejecting the nomination of the petitioner is illegal and arbitrary. The learned counsel also placed reliance on the decision in **Lakshmi Charan Sen v A.K.M.Hassan Uzzaman**. **Per contra**, the learned standing counsel submits that all the persons were included in the voters list as on the date of publication of election notification are alone eligible for voting and contesting the election and the persons included in the voters list in accordance with Electoral Registration Rules subsequent to notification are not eligible to contest the election.

Writ Petition No.20009 of 2005

Elections to Samalkot Municipality were also notified. The petitioner in this writ petition submitted his nomination for Ward No.7. The nomination was rejected on

the ground that the petitioner did not sign the declaration in Annexure VIII. The learned counsel for the petitioner, Sri V.Vishwanatham, submits that the petitioner filed his nomination on 05.09.2005 before the Election Officer. On 06.09.2005 noticing that he did not sign the declaration in Annexure VIII, he requested the Election Officer to permit to sign the declaration, in vain. The Election Officer supplied in Form of Annexure VIII and obtained the signature of the candidate as well as witnesses. According to the petitioner's counsel, the same was also enclosed to the nomination papers. Therefore, the rejection of nomination on that ground is illegal and arbitrary. Per contra, the learned standing counsel for Municipalities vehemently contends that any nomination has to be submitted in the prescribed proforma as per the Conduct of Election Rules. The prescribed Annexure VIII of the nomination form requires the candidate to sign the declaration and any failure would entail in the rejection of nomination.

Writ Petition No.20014 of 2005

The petitioner filed her nomination for Ward No.17 of Piduguralla Nagara Panchayat. Her nomination was rejected on the ground that she is working as Anganwadi Teacher in Piduguralla as certified by Child Development Project Officer of ICDS. The nomination of the petitioner was rejected as per the clarification given by SEC. The learned counsel for the petitioner, Sri N.Subba Rao, placed strong reliance on the orders of the Government in G.O.Ms.No.7 dated 07.03.1996 to contend that Anganwadi Teachers are not disqualified for contesting the Municipal elections. **Per contra**, the standing counsel for State Election Commission, Sri K.G.K.Prasad and the learned standing counsel for Municipalities, submit that Anganwadi Teacher is paid from the Municipal funds and therefore public servant not entitled to contest Municipal Elections.

Writ Petition No.20018 of 2005

The petitioner filed nomination for being elected as Member of Ward No.1 of Piduguralla Nagara Panchayat. After scrutiny on 06.09.2005, the same was rejected on the ground that the nomination form is incomplete for want of signatures of two witnesses in the columns/space provided for such signatures. The learned counsel for the petitioner, Sri N.Subba Rao, vehemently contends that either under the Act or the Conduct of Election Rules, there is no requirement to obtain the signature of witnesses and therefore the defect is not of substantial character. Strong reliance is placed on Rule 10(2) of the Conduct of Rules. This submission is refuted by the learned standing counsel for Municipalities as well as SEC.

In view of the constitutional bar for entertaining any writ petition in relation to elections or in relation to intermediary stage of elections, it would not be proper to express any opinion on the merits of each case. Suffice to mention that in some of the cases, the learned counsel for the petitioners pointed out glaring defects, illegalities and contravention in rejection of the nominations. Prima facie, these submissions are not without any substance but almost all such allegations require evidence which can only be let in after detailed trial as provided under law. In view

of this, this Court is not inclined to go into merits nor inclined to issue *Rule nisi* which might further delay the redressal to the petitioners.

The three learned standing counsel for Municipalities and the learned standing counsel for State Election Commission raised preliminary objection as to maintainability of writ petitions in view of the Article 243-ZG of Constitution of India. They placed strong reliance on the Judgment in **Channala Ramachandra Rao v State of A.P.** (for short, **Ramachandra Rao**)**, V.Narayana v Election Officer, Alwal Municipality** (for short, **Narayana**) and **K.Pamulu v Collector and District Election Authority, Guntur** (for short, **K.Pamulu**) . Reliance is also placed on three Full Bench Judgments of this Court in **A.P.Sarpanchas Association v Government of A.P.** (for short, **Sarpanchas Association**)**, G.Kanaka Durga v State Election Commissioner** (for short, **Kanaka Durga**) and **Kalla Ramakrishna v State Election Commission, Hyderabad** (for short, **Kalla Ramakrishna**). The attention of this Court is also invited to a recent Judgment of Supreme Court in **Manda Jaganath**. According to the learned counsel when once election notification is published, all disputes in relation to elections have to be questioned by way of election petition before duly constituted Tribunal.

Part IXA of Constitution of India, which was introduced by Constitution (Seventy Fourth Amendment) Act, 1992 deals with the Municipalities. All matters regarding constitution, composition, delimitation of constituencies, the constitution of election authority etc., are dealt with by Part IXA of Constitution of India. Article 243-ZG bars the jurisdiction of the Courts to examine the validity of any Law relating to delimitation of constituencies or allotment of seats to such constituencies. The said Article also provides that no election to any Municipality shall be called in question except by an election petition before duly constituted authority. A.P.Municipalities Act also contain similar provision. In exercise of powers under Section 326 of the Act, the Government promulgated Rules for Decision of Election Disputes, 1967 (for short, the Rules). These Rules prescribe the authority before whom election disputes can be brought and the grounds on which the election can be declared illegal and void.

In **Ramachandra Rao**, on the eve of Municipal elections in 2000 AD, this Court considered the validity of A.P.Municipalities (Reservation of Seats in Municipal Councils and Nagar Panchayats) Rules, 1995 as well as the action of various authorities in reserving the seats for certain categories. After referring to various decisions of the Supreme Court, interpreting Article 329 of Constitution of India, which is *in pari materia* with Article 243-ZG, this Court summarized the principles of Law as under.

> (i) by reason of clause (a) of Article 243-ZG, the Division of Municipality into territorial constituencies called wards or allotment of seats to such wards or the notification specifying the offices of Chairpersons of Municipalities reserved to persons belonging to STs., SCs., and/or BCs., cannot ordinarily be challenged under Article 226 of the Constitution.
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> (ii) In view of the embargo placed by clause (a) of Article 243-ZG, a

law providing for delimitation of constituencies and allotment of seats to such constituencies made by the State legislature under clause (6) of Article 243-T read with clause (2) of Article 243-ZA and the Entry 5 of List II of Seventh Schedule to the Constitution cannot be called in question under Article 226 of the Constitution.

(iii) The principles (i) and (ii) are subject to the condition that if the delimitation notification is arbitrary and in the sense that before delimitation no objections were invited and no hearing was given to a limited extent, the same is amenable to judicial review by this Court under Article 226 of the Constitution.

In **Narayana**, this Court considered various writ petitions filed by the candidates for Municipal Elections, 2000, against rejection of their nominations. This Court while rejecting the writ petitions observed as under.

It is too well settled that an election to a municipality shall not be called in question in a writ petition under Art.226 of the Constitution of India. That is what clause (b) of Art.243-ZG of the Constitution says. The said proviso says that an election can be questioned only by way of an election petition before a duly constituted authority in the manner provided for by the law or under any law made by the State Legislature. There cannot be any doubt that a 'challenge to an election' means and includes a challenge to any intermediary stage in the election. These intermediary stages could be 'issue of election notification', filing of nominations, scrutiny of nominations, rejection of nomination, voting on the polling day, declaration of results, declaration of the elected candidates and re-constitution of the municipality by duly designated authorities and authorities specified under the A.P.Municipalities Act, 1965 (the Act, for brevity) and various rules made under Section 326 of the Act. Therefore, any challenge to any order or any act at the intermediary stage of the election can only be made before the duly constituted Special Tribunal constituted for the purpose. Clause (b) of sub-section (2) of Section 326 of the Act empowers the State Government to constitute an Election Tribunal.

It was also held therein that improper acceptance or improper refusal or rejection of nomination papers being one of the grounds under Rule 10(c) of the Rules, a writ petition is not maintainable. It was also held that a person who is aggrieved by rejection of nomination has to approach the Election Tribunal. The Division Bench (to which I was a member) in **Pamulu**, was dealing with a case of rejection of nomination in Panchayat elections. The Division Bench followed the decisions in **Ramachandra Rao** and **Narayana**, while dismissing the writ petition. A Full Bench of this Court in **Sarpanchas Association** as well as in **Kanaka Durga** followed the decisions in **Ramachandra Rao** and **Narayana**.

In **Kalla Ramakrishna**, a Full Bench of this Court again considered the question. Doubting the ratio in **Pamulu** (mentioned as **Ramulu** case), the Division Bench referred the matter to Full Bench. The Full Bench noticed the decision cited hereinabove as well as the authorities of the Supreme Court and held that the view of this Court in the above cited cases is in conformity with the consistent view taken

by the Supreme Court. It was also laid down therein as under.

> … The person interested in questioning the elections has to wait till the election is over and institute a petition in accordance with the law calling in question the election of the successful candidate. Any matter, which has the effect of vitiating an election, should be brought up only at appropriate stage in an appropriate manner before a Special Tribunal constituted for the purpose and should not be brought up at an intermediate stage before any Court. In other words, in election matters, only one remedy is available, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage. High Court should not exercise its extraordinary jurisdiction under Article 226 of the Constitution to entertain petitions regarding improper rejection of nomination papers.

In **Manda Jaganath**, the nomination of the respondent was accepted but the B-Form submitted by him was rejected as it was kept blank. He filed a writ petition before this Court. This Court came to the conclusion that the ground on which the B-Form was rejected is technical and trivial and that the same is not one of the grounds on which election petition could be filed. Before the Supreme Court, it was urged that having regard to the Article 329(b) of Constitution of India, High Court is not justified in entertaining the writ petition. The Supreme Court accepted the contention and allowed the appeal setting aside the Judgment of the High Court. In paragraph 23 of the Judgment, the Supreme Court made the following observations.

> The next argument of learned counsel for the respondent is that as per the provisions of Section 36 of the Representation of the People Act, Rule 4 of the Conduct of Elections Rules, 1961 and clause 13 of the Election Symbols (reservation and Allotment) Order, 1968, **the omissions found by the Returning Officer in Form B filed by the respondent herein are all curable irregularities and are not defects of substantial nature, calling for rejection of the nomination paper. We think these arguments based on the provisions of the statutes, rules and orders are all arguments which can be addressed in a properly constituted election petition, if need be, and cannot be a ground for setting aside the order of the Returning Officer which is prima facie just and proper, in our opinion.**
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> (emphasis supplied)

The submissions of the learned counsel for petitioners can be broadly divided into two categories. First, under the proviso to Rule 10(2) of Conduct of Election Rules, the defect or deficiency in the nomination is not of substantial character and therefore ought to have been permitted to be rectified under the proviso to Rule 10(3) of the Conduct of Election Rules. Second category of the cases is that the rejection of nomination is in contravention of the Rules in that though the provision of the Act and Rules do not requiring the certain thing, the nomination was rejected precisely for the said reason, which is illegal. Insofar as first aspect of the matter is concerned, this Court holds that these are the matters precisely fall within the election dispute. Insofar as second aspect is concerned, the question would be whether violation of

the provisions of the Act or the Rules can be a ground for entertaining writ petition. This point is also no more *res integra.*

In **C.Subrahmanyam v K.Ramanjaneyulu**, this Court held that a writ petition would lie for violation of Section 231 of A.P.Panchayat Raj Act, 1994. The Supreme Court, however, reversed the Judgment of High Court observing as under.

> In our opinion, the main question for decision being the non-compliance of a provision of the Act which is a ground for an election petition in Rule 12 framed under the Act, the writ petition under Article 226 of the Constitution of India should not have been entertained for this purpose. Accordingly, the appeal is allowed. The impugned order of the High Court is set aside resulting in dismissal of the writ petition. No costs.

In view of the settled legal positions, these writ petitions are not maintainable. They are accordingly dismissed. However, it shall be open to the petitioners to await the result of the elections and file election petition before jurisdictional Election Tribunal within the period of limitation. The Election Tribunal shall dispose of the matter within a period of six months from the date of service of notice on the respondents therein without being influenced by any of the observations made hereinabove. There shall be no order as to costs.

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(V.V.S.RAO,J)

.09.2005.

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